

TIR 15-8: Potential Expiration of Federal Internet Tax Freedom Act

The federal Internet Tax Freedom Act, 47 U.S.C. 151, Ancillary Laws ("ITFA") is scheduled to expire on October 1, 2015, in the absence of Congressional action. In light of the distinct possibility that Congress may allow ITFA to expire and then subsequently enact a retroactive extension of the Act, as it has done in the past, the Department is hereby advising vendors of Internet access to customers in Massachusetts that for purposes of sales tax collection and remission, those vendors may continue to rely on the lists of taxable telecommunications services and non-taxable and exempt services, including Internet access charges, as published in TIR 05-8, until further notice from DOR. Such vendors may also continue to rely on the provisions of Section 1106^[1] of ITFA in taxing retail sales of bundled charges including Internet access.

This TIR does not relieve purchasers of taxable services of potential use tax liability in the event that ITFA expires and Congress does not enact an extension; however, any such liability does not need to be reported until further notice from DOR and no penalties would apply to late reporting or payment of such use tax.

If neither Congress nor the Massachusetts legislature has acted by December 31, 2015, the Department anticipates providing further guidance.

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September 8, 2015

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^[1] Sec. 1106. Accounting rule.

(a) In general. If charges for Internet access are aggregated with and not separately stated from charges for telecommunications or other charges that are subject to taxation, then the charges for Internet access may be subject to taxation unless the Internet access provider can reasonably identify the charges for Internet access from its books and records kept in the regular course of business.

(b) Definitions. In this section:

(1) Charges for Internet access. The term 'charges for Internet access' means all charges for Internet access as defined in section 1105(5).

(2) Charges for telecommunications. The term 'charges for telecommunications' means all charges for telecommunications, except to the extent such telecommunications are purchased, used, or sold by a provider of Internet access to provide Internet access or to otherwise enable users to access content, information or other services offered over the Internet.